

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

DOUGLAS S. BROWN

Plaintiff,

v.

BANK OF AMERICA, N.A.

Defendant.

Civil Action No. 05 10713 PBS
Hon. Patti. B. Saris

Complaint Filed: April 11, 2005

JOINT STIPULATION TO EXTEND TIME TO RESPOND TO COMPLAINT

The Plaintiff, Douglas S. Brown ("Brown"), and Defendant, Bank of America, N.A., ("Bank") hereby jointly state as follows:

1. On April 11, 2005, Brown filed a Complaint against the Bank in this Action seeking damages for breach of the Electronic Funds Transfer Act ("EFTA"), 15 U.S.C., §1693b(d)(3)(B)(i) and Regulation E, 12 C.F.R. §205.16(c)(1), and also requests that a class action be certified. On the same date, Brown served the Bank with the Summons and Complaint ("Brown Case");
2. On April 12, 2005, the Plaintiff, Stephen Cawelti, filed a similar Complaint against the Bank in the United States District Court, Central District of California, Western Division, Case No. CV05 2680 SJO (CWx), ("Cawelti Case") and on April 27, 2005, the Plaintiff, James A. Prosser, filed a similar Complaint against the Bank in the United States District Court, District of Maryland, Case No. 1:05-cv-01134-CCB ("Prosser Case");

3. On October 31, 2005, the Judicial Panel on Multidistrict Litigation allowed the Joint Motion for Consolidation before this Court of the Brown, Cawelti, and Prosser cases. A copy of the Order is attached hereto as Exhibit A;
4. Based upon the Panel's Order and per a discussion of counsel for the parties, the parties agree that the Plaintiffs, Brown, Cawelti and Prosser, will file on or before December 22, 2005, an Amended Complaint consolidating the Cawelti and Prosser cases into the Brown Action. The parties further agree that the Bank shall have thirty (30) days from the receipt of service of the Amended Complaint to file a responsive pleading to the consolidated action.

WHEREFORE, IT IS HEREBY STIPULATED AND AGREED by the Plaintiffs and Defendant as follows:

1. That the Plaintiffs, Douglas S. Brown, Stephen Cawelti, and James A. Prosser, shall file a consolidated Amended Complaint on or before December 23, 2005;
2. That the Defendant, Bank of America, N.A., shall have thirty (30) days from the receipt of service of the consolidated Amended Complaint to file a Responsive Pleading; and

3. That the Court enter such other relief as it deems just and proper.

BANK OF AMERICA, N.A.

By its attorneys,

E. Macey Russell /s/

E. Macey Russell, P.C. (BBO #542371)
Choate, Hall & Stewart, LLP
Exchange Place, 53 State Street
Boston, MA 02109
Tel.: (617) 248-5000
Fax: (617)-248-4000

Dated: January 13, 2006

DOUGLAS S. BROWN

By his attorneys,

/s/

Christopher M. Lefebvre
Claude Lefebvre, P.C.
Two Dexter Street
Pawtucket, RI 02860
Tel: (401)728-6060
Fax: (401)728-6534

Dated: January 13, 2006

I, E. Macey Russell counsel for Bank of America, hereby certify that Christopher M. Lefebvre, counsel for Douglas S. Brown, has agreed to the form and substance of this Joint Stipulation to Extend Time to Respond to Complaint, and that Mr. Lefebvre, via e-mail, has authorized me to submit this document electronically.

E. Macey Russell /s/

E. Macey Russell

EXHIBIT A

ACERTIFIED TRUE COPY

OCT 31 2005

ATTEST
Christina Spenser
**FOR THE JUDICIAL PANEL ON
MULTIDISTRICT LITIGATION**

RELEASED FOR PUBLICATION

DOCKET NO. 1713

**JUDICIAL PANEL ON
MULTIDISTRICT LITIGATION**

OCT 31 2005

**FILED
CLERK'S OFFICE**

**BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION
IN RE BANK OF AMERICA ATM FEE LITIGATION**

Stephen Cawelti v. Bank of America, N.A., C.D. California, C.A. No. 2:05-2680

James A. Prosser v. Bank of America, N.A., D. Maryland, C.A. No. 1:05-1134

Douglas S. Brown v. Bank of America, N.A., D. Massachusetts, C.A. No. 1:05-10713

**BEFORE WM. TERRELL HODGES,* CHAIRMAN, JOHN F. KEENAN, D.
LOWELL JENSEN, J. FREDERICK MOTZ, ROBERT L. MILLER, JR.,
KATHRYN H. VRATIL AND DAVID R. HANSEN, JUDGES OF THE PANEL**

TRANSFER ORDER

This litigation currently consists of one action pending in each of the following districts: the Central District of California, the District of Maryland and the District of Massachusetts. The parties to these actions jointly move the Panel, pursuant to 28 U.S.C. § 1407, for an order centralizing this litigation in the District of Massachusetts.

On the basis of the papers filed and hearing session held, the Panel finds that these three actions involve common questions of fact, and that centralization under Section 1407 in the District of Massachusetts will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. These actions share factual questions regarding whether Bank of America, N.A. (Bank of America) failed to properly disclose that a fee would be charged to non-Bank of America customers who used a Bank of America automatic teller machine. Centralization under Section 1407 is necessary in order to eliminate duplicative discovery, prevent inconsistent pretrial rulings, and conserve the resources of the parties, their counsel and the judiciary.

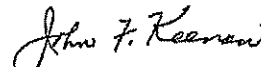
We are persuaded that the District of Massachusetts is an appropriate transferee forum for this litigation. The District of Massachusetts i) contains the first-filed action; and ii) enjoys the support of all parties.

* Judge Hodges took no part in the decision of this matter.

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IT IS THEREFORE ORDERED that, pursuant to 28 U.S.C. § 1407, the actions pending outside the District of Massachusetts are transferred to the District of Massachusetts and, with the consent of that court, assigned to the Honorable Patti B. Saris for coordinated or consolidated pretrial proceedings with the action pending in that district.

FOR THE PANEL:



John F. Keenan
Acting Chairman

**UNITED STATES OF AMERICA
JUDICIAL PANEL ON MULTIDISTRICT LITIGATION**

CHAIRMAN:

Judge Wm. Terrell Hodges
United States District Court
Middle District of Florida

MEMBERS:

Judge John F. Keenan
United States District Court
Southern District of New York

Judge D. Lowell Jensen
United States District Court
Northern District of California

Judge J. Frederick Motz
United States District Court
District of Maryland

Judge Robert L. Miller, Jr.
United States District Court
Northern District of Indiana

Judge Kathryn H. Vratil
United States District Court
District of Kansas

Judge David R. Hansen
United States Court of Appeals
Eighth Circuit

DIRECT REPLY TO:

Michael J. Beck
Clerk of the Panel
One Columbus Circle, NE
Thurgood Marshall Federal
Judiciary Building
Room G-255, North Lobby
Washington, D.C. 20002

Telephone: [202] 502-2800
Fax: [202] 502-2888

<http://www.jpml.uscourts.gov>

October 31, 2005

Sarah Thornton, Clerk
2300 John Joseph Moakley U.S. Courthouse
One Courthouse Way
Boston, MA 02210-3002

Re: MDL-1713 -- In re Bank of America ATM Fee Litigation

Stephen Cawelti v. Bank of America, N.A., C.D. California C.A. No. 2:05-2680

James A. Prosser v. Bank of America, N.A., D. Maryland C.A. No. 1:05-1134

Douglas S. Brown v. Bank of America, N.A., D. Massachusetts C.A. No. 1:05-10713

Dear Ms. Thornton:

I am enclosing a certified copy and one additional copy of a transfer order filed today by the Panel in the above-captioned matter. The order is directed to you for filing.

The Panel's governing statute, 28 U.S.C. §1407, requires that the transferee clerk "...transmit a certified copy of the Panel's order to transfer to the clerk of the district court from which the action is being transferred."

A copy of Rule 1.6 of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, 199 F.R.D. 425, 428 (2001), which deals specifically with the transfer of files, is enclosed for your convenience. Also enclosed are a complete set of the Panel Rules and a copy of Chapter 7 of Volume 4 of the Clerks Manual, United States District Courts.

The Panel Clerk's Office maintains the only statistical accounting of multidistrict litigation traffic in the federal courts. These statistics are used by the Administrative Office of the United States Courts and the Judicial Conference. Therefore, your cooperation in keeping the Panel advised of the progress of this litigation would be appreciated. We are particularly interested in receiving the docket numbers assigned to each transferred action by your court; the caption and docket numbers of all actions originally filed in your district; and copies of orders regarding appointment of liaison counsel, settlements, dismissals, state court remands, and reassignments to other judges in your district.

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Your attention is also directed to Panel Rule 7.6, regarding termination and remand of transferred actions. Upon notification from your court of a finding by the transferee judge that Section 1407 remand of a transferred action is appropriate, this office will promptly file a conditional remand order.

For your information, I am enclosing a copy of the Panel Attorney Service List.

Very truly,

Michael J. Beck
Clerk of the Panel

By *Janisra Spinner*
Deputy Clerk

Enclosures

cc w/all enclosures (Chapter 7 of Volume 4 of the Clerks Manual, U.S. District Courts, Rule 1.6, R.P.J.P.M.L., transfer order, Panel Attorney Service List, and complete Panel Rules):

Transferee Judge: Judge Patti B. Saris

cc w/order only: Transferee Chief Judge: Judge William G. Young

cc w/order and Rule 1.6, R.P.J.P.M.L.:

Transferor Clerk(s): Judge Catherine C. Blake
Judge S. James Otero

Transferor Judge(s): Felicia C. Cannon
Sherri R. Carter

XMDL

**U.S. District Court
District of Maryland (Baltimore)
CIVIL DOCKET FOR CASE #: 1:05-cv-01134-CCB**

Prosser v. Bank of America, N.A.
Assigned to: Judge Catherine C. Blake
Cause: 28:1331 Fed. Question

Date Filed: 04/27/2005
Jury Demand: Plaintiff
Nature of Suit: 430 Banks and Banking
Jurisdiction: Federal Question

Plaintiff

James A. Prosser
*individually, and on behalf of class of
similarly situated persons*

represented by **Scott C Borison**
Legg Law Firm LLC
5500 Buckeystown Pike
Frederick, MD 21703
13016201016
Fax: 13016201018
Email: borison@legglaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant

Bank of America, N.A.

represented by **Laurie A Hand**
Morrison and Foerster LLP
1650 Tysons Blvd Ste 300
McLean, VA 22102
17037607725
Fax: 17037607777
Email: lhand@mofo.com
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
04/27/2005	<u>1</u>	COMPLAINT against Bank of America, N.A. (Filing fee \$ 250 receipt number 14637001707.), filed by James A. Prosser. (Attachments: # <u>1</u> Civil Cover Sheet)(ljs, Deputy Clerk). (Entered: 04/27/2005)
04/27/2005		Jury Trial Demand by James A. Prosser. (ljs, Deputy Clerk) (Entered: 04/27/2005)
04/27/2005	<u>2</u>	Summons Issued 20 days as to Bank of America, N.A.. (ljs, Deputy Clerk) (Entered: 04/27/2005)
05/17/2005	<u>3</u>	AFFIDAVIT of Service for Summons served on Bank of America, N.A. on 5/3/05, filed by James A. Prosser. (Attachments: # <u>1</u> Exhibit Return

		Receipt)(Borison, Scott) (Entered: 05/17/2005)
05/26/2005	<u>4</u>	STIPULATION re <u>1</u> Complaint to Extend Time to Respond by Bank of America, N.A.. (Hand, Laurie) (Entered: 05/26/2005)
05/26/2005	<u>5</u>	NOTICE of Appearance by Laurie A Hand on behalf of Bank of America, N.A. (Hand, Laurie) (Entered: 05/26/2005)
05/26/2005	<u>6</u>	PAPERLESS ORDER APPROVING <u>4</u> Joint Stipulation to Extend Time to Respond to Complaint. Signed by Judge Catherine C. Blake on May 26, 2005. (Blake, Catherine) (Entered: 05/26/2005)
05/26/2005	<u>7</u>	Corporate Disclosure Statement by Bank of America, N.A.. (Hand, Laurie) (Entered: 05/26/2005)
06/29/2005	<u>8</u>	NOTICE by Bank of America, N.A. of Filing Petition Pursuant to 28 U.S.C. 1407 (Attachments: # <u>1</u> Motion for Transfer# <u>2</u> Joint Memorandum of Law in Support of Motion for Transfer)(Hand, Laurie) (Entered: 06/29/2005)

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